Mason Tenders Local Union #388, affiliated with Virginia and North Carolina Laborers' District Council *and* Sprinkle Masonry, Inc. Case 5–CB–10112

January 23, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by Sprinkle Masonry, Inc., the Charging Party, on January 30, 2007, the General Counsel issued the complaint on May 31, 2007, against Mason Tenders Local Union #388, affiliated with Virginia and North Carolina Laborers' District Council, the Respondent, alleging that it has violated Section 8(b)(3) of the Act. Thereafter, the Charging Party and the Respondent entered into an informal settlement agreement that was approved by the Regional Director for Region 5 on August 22, 2007. The settlement agreement required the Respondent to provide the Charging Party with "any collective-bargaining agreements, memoranda of agreement, side letters and other agreements negotiated on or after July 1, 2004, or, if no such information exists, [. . .] with a statement to that effect."

The settlement agreement also contained the following provision:

> In the event of non-compliance with this settlement agreement, the allegations in a Complaint issued with regard to the violations covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order.

By letter dated August 23, 2007, the Region provided the Respondent with a conformed copy of the settlement agreement, and copies of the notice to employees and members for posting. This letter also advised the Respondent to take the steps necessary to comply with the settlement agreement. By letter dated September 13, 2007, the compliance officer for Region 5 advised the Respondent that it had not complied with the terms of the settlement agreement and warned that its failure to do so by September 21, 2007, would result in the filing of a motion for summary judgment as provided by the settlement agreement.

The Respondent failed to comply. Accordingly, on November 16, 2007, the General Counsel filed a Motion for Summary Judgment with the Board. Thereafter, on November 27, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.[1] The Respondent filed no response. The allegations in the motion are therefore undisputed.

On the entire record, the National Labor Relations Board[2] makes the following

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to provide the Charging Party with any collective-bargaining agreements, memoranda of agreement, side letters and other agreements negotiated on or after July 1, 2004, or a statement stating that no such information exists, and failing to post the Notice to Employees and Members. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.[3] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Charging Party, a Virginia corporation with an office and place of business in Chesapeake, Virginia, has been engaged as a masonry contractor in the construction industry doing commercial and industrial construction.

During the preceding 12 months prior to the issuance of the complaint, a representative period, the Charging Party, in conducting its business operations described above, purchased and received at its Chesapeake, Virginia facility goods valued in excess of $50,000 directly from points located outside the State of Virginia.

[1] The Order and notice issued on November 21, 2007, erroneously stating that the General Counsel had filed a motion for summary judgment on the ground that the Respondent failed to file an answer to the complaint, has been vacated.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[3] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

We find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Robert Fahey held the position of Business Agent, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Charging Party constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees in the classifications and categories of work covered by the agreement between the Virginia and North Carolina Laborers' District Council, for and on behalf of Mason Tenders Local Union 388, and Sprinkle Masonry and other Signatory Contractors.

On or about June 28, 2004, the Charging Party and the Respondent entered into a collective-bargaining agreement effective for the period from July 1, 2004, until June 30, 2006. The agreement was renewed on September 13, 2006, to remain in effect until April 30, 2007, and thereafter, to continue in effect from year to year, unless timely notice was given in accordance with the terms of the "Effective Dates" section of the collective-bargaining agreement.

Since on or about July 1, 2004, pursuant to the agreement described above, the Charging Party has recognized the Respondent as the exclusive collective-bargaining representative of the unit.

At all material times since July 1, 2004, based on Section 9(a) of the Act, the Respondent has been the limited exclusive collective-bargaining representative of the Unit.[4]

On or about June 23, 2006, by oral request to Business Agent Fahey, the Charging Party requested that the Respondent provide the Charging Party with all agreements entered into by the Respondent with other employers.

On or about June 26, 2006, by letter sent by mail and facsimile to Fahey, the Charging Party requested that the Respondent provide the Charging Party with any and all collective-bargaining agreements, memoranda of agreement, side letters and other agreements entered into by the Respondent with other employers in any industry since July 1, 2004.

On or about November 7, 2006, by letter sent by mail, facsimile and electronic mail to the Respondent's counsel, the Charging Party requested that the Respondent provide the Charging Party with any and all collective-bargaining agreements, memoranda of agreement, side letters and other agreements entered into by the Respondent with other employers in any industry since July 1, 2004.

The information requested by the Charging Party is necessary for, and relevant to, the Charging Party's monitoring of article XXIII, the "Favored Nations Clause" of the parties' collective-bargaining agreement described above.

Since on or about June 23, 2006, the Respondent has failed and refused to furnish the Charging Party with the requested information.

CONCLUSION OF LAW

By failing and refusing to furnish the Charging Party with the requested information, the Union, the representative of the Charging Party's employees, has failed and refused to bargain collectively and in good faith with an employer, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(b)(3) of the Act by failing and refusing to provide the Charging Party with information that is relevant and necessary for collective bargaining, we shall order the Respondent to provide the Charging Party with any collective-bargaining agreements, memoranda of agreement, side letters and other agreements negotiated on or after July 1, 2004, or, if no such information exists, with a statement to that effect.

ORDER

The National Labor Relations Board orders that the Respondent, Mason Tenders Local Union #388, affiliated with Virginia and North Carolina Laborers' District Council, Chesapeake, Virginia, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Charging Party, as employer of the employees in the following unit:

> All employees in the classifications and categories of work covered by the agreement between the Virginia

[4] The Charging Party has recognized the Respondent as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Respondent has ever been established.

and North Carolina Laborers' District Council, for and on behalf of Mason Tenders Local Union 388, and Sprinkle Masonry and other Signatory Contractors.

(b) Failing and refusing to furnish the Charging Party with information that is necessary for, and relevant to, the Charging Party's monitoring of article XXIII, the "Favored Nations Clause" of the parties' collective-bargaining agreement.

(c) In any like or related refusing to bargain collectively and in good faith with Sprinkle Masonry, Inc., the Employer.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Charging Party with any collective-bargaining agreements, memoranda of agreement, side letters and other agreements negotiated on or after July 1, 2004, or, if no such information exists, with a statement to that effect.

(b) Within 14 days after service by the Region, post at its business office and meeting halls in Norfolk, Virginia, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 5 signed copies of the notice in sufficient numbers for posting by the Charging Party at its Chesapeake, Virginia office, if it is willing, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 23, 2008

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Sprinkle Masonry, Inc., as employer of the employees in the following unit:

> All employees in the classifications and categories of work covered by the agreement between the Virginia and North Carolina Laborers' District Council, for and on behalf of Mason Tenders Local Union 388, and Sprinkle Masonry and other Signatory Contractors.

WE WILL NOT fail and refuse to provide Sprinkle Masonry, Inc. with information that is necessary for, and relevant to, Sprinkle Masonry, Inc.'s monitoring of article XXIII, the "Favored Nations Clause" of our collective-bargaining agreement.

WE WILL NOT in any like or related manner refuse to bargain collectively with Sprinkle Masonry, Inc. the Employer.

WE WILL provide Sprinkle Masonry, Inc. with any collective-bargaining agreements, memoranda of agreement, side letters and other agreements negotiated on or after July 1, 2004, or, if no such information exists, with a statement to that effect.

MASON TENDERS LOCAL UNION #388, AFFILIATED WITH VIRGINIA AND NORTH CAROLINA LABORERS' DISTRICT COUNCIL